

Judge Pechman

CR 02-00242 #00000015

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AT SEATTLE
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

KEVIN McCARTHY,

Defendant

NO CR02-242P

PLEA AGREEMENT

~~FILED Under Seal~~

Come now the United States of America, by and through Mark Bartlett, Acting United States Attorney, and Jeffrey B. Coopersmith, Ye-Tung Woo, and Richard E. Cohen, Assistant United States Attorneys for the Western District of Washington, and the defendant, KEVIN McCARTHY, and his attorney, Carol Koller, and enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(e).

1 Waiver of Indictment. Defendant, having been advised of the right to be charged by Indictment, agrees to waive that right and enter a plea of guilty to the charges brought by the United States Attorney in an Information

2 The Charges. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter a plea of guilty to the following charges contained in the Information. By entering this plea of guilty, Defendant hereby waives all objections to the form of the charging document

a Conspiracy to Commit Securities Fraud, Wire Fraud, Mail Fraud, and Money Laundering, as charged in Count 1 of the Information, in violation of Title 18, United States Code, Section 371; and

PLEA AGREEMENT
(Kevin McCarthy, Case No. CR02-242P) - 1

UNITED STATES ATTORNEY
601 UNION STREET, SUITE 5100
SEATTLE, WASHINGTON 98101-3903
(206) 553-7970

1 b. Mail Fraud, as charged in Count 2 of the Information, in violation of
2 Title 18, United States Code, Section 1341.

3 3. The Penalties. Defendant understands that the maximum statutory penalties
4 for Counts 1 and 2 of the Information are as follows:

5 a. Count 1 (Conspiracy): imprisonment for up to five (5) years, a fine of
6 up to two hundred fifty thousand dollars (\$250,000), a period of supervision following
7 release from prison of between two (2) and three (3) years, and a one hundred dollar
8 (\$100) penalty assessment

9 b. Count 2 (Mail Fraud): imprisonment for up to five (5) years, a fine of
10 up to two hundred fifty thousand dollars (\$250,000), a period of supervision following
11 release from prison of between two (2) and three (3) years, and a one hundred dollar
12 (\$100) penalty assessment

13 Defendant understands that the sentences for Counts 1 and 2 of the
14 Information may be imposed consecutively, such that the Court may sentence the defendant
15 to a maximum of ten (10) years imprisonment, and a five hundred thousand dollar
16 (\$500,000) fine. The Court may also impose an alternative fine based on gain or loss equal
17 to twice the gross gain or twice the gross loss. The defendant further understands and
18 agrees that he will be required to pay a total penalty assessment of two hundred dollars
19 (\$200) at or before the time of sentencing.

20 Defendant agrees that any monetary penalty the Court imposes, including the
21 special assessment, fine, costs or restitution, is due and payable immediately, and further
22 agrees to submit a completed Financial Statement of Debtor form as requested by the
23 United States Attorney's Office

24 Defendant understands that supervised release is a period of time following
25 imprisonment during which he will be subject to certain restrictions and requirements
26 Defendant further understands that if supervised release is imposed and he violates one or
27 more its conditions, he could be returned to prison for all or part of the term of supervised
28

1 release that was originally imposed. This could result in Defendant serving a total term of
2 imprisonment greater than the statutory maximum stated above.

3 4. Rights Waived by Pleading Guilty. Defendant represents to the Court that he
4 is satisfied that his attorney has rendered effective assistance. Defendant understands that,
5 by pleading guilty, he knowingly and voluntarily waives the following rights:

- 6 a. The right to plead not guilty, and to persist in a plea of not guilty;
- 7 b. The right to a speedy and public trial before a jury of Defendant's
8 peers;
- 9 c. The right to the effective assistance of counsel at trial, including, if
10 Defendant could not afford an attorney, the right to have the Court appoint one for
11 Defendant,
- 12 d. The right to be presumed innocent until guilt has been established at
13 trial, beyond a reasonable doubt;
- 14 e. The right to confront and cross-examine witnesses against Defendant,
- 15 f. The right to compel or subpoena witnesses to appear on Defendant's
16 behalf,
- 17 g. The right to testify or to remain silent at trial, at which such silence
18 could not be used against Defendant; and
- 19 h. The right to appeal a finding of guilt or any pretrial rulings.

20 5. Applicability of Sentencing Guidelines. Defendant understands and
21 acknowledges the following

- 22 a. The United States Sentencing Guidelines, promulgated by the
23 United States Sentencing Commission, are applicable to this case;
- 24 b. The Court will determine Defendant's applicable Sentencing
25 Guidelines range at the time of sentencing;
- 26 c. The Court may impose any sentence authorized by law, including a
27 sentence that, under some circumstances, departs from any applicable Sentencing
28 Guidelines range up to the maximum term authorized by law,

1 d The Court is not bound by any recommendation regarding the sentence
2 to be imposed, or by any calculation or estimation of the Sentencing Guidelines range
3 offered by the parties, or by the United States Probation Department; and

4 e Defendant may not withdraw a guilty plea solely because of the
5 sentence imposed by the Court.

6 6. Ultimate Sentence. Defendant acknowledges that no one has promised or
7 guaranteed what sentence the Court will impose.

8 7. Elements of the Offenses.

9 a. The elements of the offense of Conspiracy to Commit Securities
10 Fraud, Wire Fraud, Mail Fraud, and Money Laundering, as charged in Count 1 of the
11 Information, in violation of Title 18, United States Code, Section 371, are as follows
12 (1) there was an agreement between Defendant and at least one other person to commit
13 securities fraud, wire fraud, mail fraud, or money laundering, or at least one of these
14 offenses; (2) Defendant became a member of the conspiracy knowing of at least one of its
15 objects and intending to help accomplish such object or objects, and (3) one of the
16 members of the conspiracy performed at least one overt act for the purpose of carrying out
17 the conspiracy.

18 b. The elements of the offense of Mail Fraud, as charged in Count 2 of
19 the Information and as an object of the conspiracy charged in Count 1 of the Information, in
20 violation of Title 18, United States Code, Section 1341, are as follows. (1) defendant
21 knowingly and willfully made up a scheme or plan to defraud or for obtaining money or
22 property by making false promises or statements; (2) defendant knew that such promises or
23 statements were false; (3) the promises or statements were of a kind that would reasonably
24 influence a person to part with money or property, (4) defendant acted with the intent to
25 defraud; and (5) defendant used, or caused to be used, the mails to carry out or attempt to
26 carry out an essential part of the scheme.

27 8 Restitution. Defendant shall make restitution in the amount of twelve
28 million, one hundred seventy-six thousand, two hundred ninety dollars (\$12,176,290),

1 representing the amount of loss suffered by investors in Cascade Pointe, and additional
2 restitution in an amount to be determined by the Court at sentencing representing the
3 amount of loss suffered by investors who invested through HMC Promissory Notes after
4 April 9, 2001. Defendant shall receive credit for any amounts already paid or collected.
5 The total restitution amount shall be due and payable immediately upon sentencing, and
6 shall be paid in accordance with a schedule of payments as set by the United States
7 Probation Office and ordered by the Court. Defendant's restitution obligation shall be joint
8 and several with any other individuals who are charged and convicted of having been
9 involved in the same conspiracy and scheme to defraud.

10 9. Loss Amount The United States and Defendant agree that the correct
11 amount of the loss is between seven million dollars (\$7,000,000) and twenty million
12 dollars (\$20,000,000) for purposes of U.S.S.G. § 2B1.1(b)(1).

13 10. Forfeiture Defendant agrees to forfeit to the United States immediately all
14 of his right, title and interest in any and all property, real or personal, constituting, or
15 derived from, any proceeds traceable to the offense charged in Count 1 of the Information,
16 that is subject to forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C)
17 and Title 28, United States Code, Section 2461(c), including the following assets.

18 a The real property located at 17410 102nd Avenue N.E., Bothell,
19 Washington, its buildings, improvements, appurtenances, fixtures, attachments and
20 easements, more particularly described in Attachment A, which is incorporated herein;

21 b Twelve thousand three hundred and ninety dollars (\$12,390) in United
22 States currency,

23 c. One home entertainment unit located at 17410 102nd Avenue N.E.,
24 Bothell, Washington.

25 d \$11,000 in United States currency that has been posted with the
26 Court, and all additional proceeds from any accounts under the control of defendant KEVIN
27 McCARTHY located in Nevis or other offshore locations
28

1 Defendant agrees that each of the above-listed assets constitutes or is
2 traceable to the proceeds of the offense charged in Count 1 of the Information, Conspiracy
3 to Commit Securities Fraud, Wire Fraud, Mail Fraud, and Money Laundering, in violation
4 of Title 18, United States Code, Section 371.

5 Defendant agrees to fully assist the United States in the forfeiture of the
6 listed assets and to take whatever steps are necessary to pass clear title to the United States,
7 including but not limited to surrendering title and executing any documents necessary to
8 effectuate such forfeiture; assisting in bringing any assets located outside the United States
9 within the jurisdiction of the United States; and taking whatever steps are necessary to
10 ensure that assets subject to forfeiture are not sold, disbursed, wasted, hidden, or otherwise
11 made unavailable for forfeiture. Defendant agrees not to file a claim to any of the listed
12 property or assets in any civil forfeiture proceeding, administrative or judicial, which may
13 be initiated

14 Defendant further agrees to provide a truthful statement regarding all of his
15 assets, and to make a full and complete disclosure of all assets in which Defendant has any
16 interest or over which Defendant exercises control and those which are held or controlled
17 by a nominee(s). Defendant further agrees to submit to a polygraph examination on the
18 issue of assets if it is deemed necessary by the United States.

19 The United States reserves its right to proceed against any remaining assets
20 not identified in this Plea Agreement, including any property in which Defendant has any
21 interest or control, if said assets, real or personal, tangible or intangible, are traceable to
22 proceeds of the offense charged in Court 1 of the Information

23 11. Statement of Facts. The parties agree on the following facts in support of
24 Defendant's guilty plea and for purposes of calculating the base offense level of the
25 Sentencing Guidelines. Defendant admits he is guilty of the charged offenses.

26 **COUNT 1 -- THE CONSPIRACY**

27 From in or about 1995, and continuing thereafter until on or about January
28 23, 2002, at Bellevue, Seattle and Bainbridge Island, within the Western District of
Washington, and elsewhere, the defendant, KEVIN McCARTHY, together with other
persons known and unknown to the United States Attorney, did unlawfully, willfully, and

1 knowingly combine, conspire, confederate and agree among themselves and each other to
2 commit certain offenses against the United States, as set forth below. Defendant KEVIN
McCARTHY knowingly joined the conspiracy on or about April 10, 2001.

3 INTRODUCTION

4 a. Beginning on or about September 28, 2000, defendant KEVIN
5 McCARTHY was employed by Health Maintenance Centers, Inc., ("HMC") as the head of
6 HMC's "investor relations" department. According to public records, HMC was
7 incorporated in Washington State on May 12, 1995, and was administratively dissolved and
8 reinstated at various times throughout the period from on or about December 6, 1995,
9 through on or about October 30, 2000. The Articles of Incorporation for HMC provided
10 that "[t]his corporation is authorized to issue 10,000 shares of common stock and each
11 share shall have a par value of \$1.00." On February 5, 1997, HMC filed Articles of
12 Amendment that provided, among other things, that "[t]his corporation is authorized to issue
13 15,000,000 shares of common stock and each share shall have a par value of \$1.00." The
14 Articles of Incorporation filed May 12, 2002, also provided that the corporate purposes of
15 HMC were "[t]o operate health and exercise clubs, and related facilities" and "[t]o engage in
16 any business, trade or activity which may be conducted lawfully by a corporation organized
17 under the Washington State Business Corporation Act." On or about December 26, 2001,
18 HMC ceased to exist as a Washington State corporation and merged with a Delaware
19 corporation known as HMC Acquisition Corp., a wholly-owned subsidiary of Znetix, Inc.
20 Also on or about December 26, 2001, HMC Acquisition Corp changed its name to Health
Maintenance Centers, Inc

21 b. According to public records, Project X, Inc., was incorporated in the
22 State of Washington on November 3, 1999. On October 3, 2000, Project X filed Articles
23 of Amendment with the Washington State Secretary of State changing its name to Znetix,
24 Inc. On or about September 25, 2001, Znetix, Inc, ceased to exist as a Washington State
corporation and merged with a Delaware corporation known as Znetix, Inc

25 c. From in or about 1995 through in or about January 2002, HMC,
26 Project X, and Znetix, and affiliated entities, through various sales agents and at the
27 direction of persons known and unknown to the United States Attorney, including defendant
28 KEVIN McCARTHY, solicited and received in excess of \$50 million from investors. At
no time were the offers and sales of securities issued by HMC, Project X, Znetix, and
affiliated entities registered with the United States Securities and Exchange Commission,
the State of Washington Department of Financial Institutions, Securities Division, or with
the securities regulatory authority in any other state.

29 d. On or about April 9, 2001, the State of Washington Department of
Financial Institutions, Securities Division, issued a Summary Order to Cease and Desist
against HMC and an individual known to the United States Attorney. The Cease and Desist
Order, among other things, barred HMC (and its employees, officers and directors,
including defendant KEVIN McCARTHY) from selling securities through fraudulent
representations and material omissions, and in violation of the State of Washington's
securities registration statute

30 e. Cascade Pointe LLC was a limited liability company formed in
Washington State on or about May 2, 2001. Cascade Pointe of Arizona LLC was a limited
liability company formed in Arizona in or about July 2001. Cascade Pointe of Nevis LLC
was a limited liability company established in the Carribean nation of Nevis on or about

1 July 26, 2001.¹ From on or about May 2, 2001, through in or about January 2002,
2 defendant KEVIN McCARTHY, along with others known and unknown to the United States
Attorney, secretly controlled and directed the activities of Cascade Pointe.

3 f. From in or about May 2, 2001, through in or about January, 2002,
4 Cascade Pointe, through various sales agents and at the direction of defendant KEVIN
5 McCARTHY and others known and unknown to the United States Attorney, solicited and
6 received in excess of \$12 million from investors. At no time were the offers and sales of
7 securities issued by Cascade Pointe and affiliated entities registered with the United States
8 Securities and Exchange Commission, the State of Washington Department of Financial
9 Institutions, Securities Division, or with the securities regulatory authority in any other
10 state.

11 OBJECTS OF THE CONSPIRACY

12 The objects of the conspiracy were as follows:

13 g. To unlawfully, knowingly, and willfully, directly and indirectly, by the
14 use of means and instrumentalities of interstate commerce, and of the mails, use and
15 employ, in connection with the purchases and sales of securities, manipulative and
16 deceptive devices and contrivances, by (a) employing devices, schemes, and artifices to
17 defraud; (b) making untrue statements of material facts and omitting to state material facts
18 necessary to make the statements made, in light of the circumstances in which they were
19 made, not misleading; and (c) engaging in acts, practices, and courses of business which
20 operated and would operate as a fraud and deceit upon other persons, in violation of
21 Title 15, United States Code, Sections 78j(b) and 78ff(a), and Title 17, Code of Federal
22 Regulations, Section 240.10b-5,

23 h. To knowingly and willfully transmit and cause to be transmitted by
24 wire communication in interstate and foreign commerce writings, signs, signals, pictures,
25 and sounds in furtherance of a scheme and artifice to defraud and for obtaining money and
26 property by means of false and fraudulent pretenses, representations, and promises, in
27 violation of Title 18, United States Code, Section 1343;

28 i. To knowingly and willfully use and cause the United States mail and
interstate couriers to be used in furtherance and execution of a scheme and artifice to
defraud investors in HMC, Project X, Znetix, Cascade Pointe, and affiliated entities, and a
scheme and artifice for obtaining money and property of said investors by means of false
and fraudulent pretenses, representations and promises, in violation of Title 18, United
States Code, Section 1341;

j. To conduct and attempt to conduct financial transactions affecting
interstate commerce involving the proceeds of specified unlawful activity (mail fraud, wire
fraud, and securities fraud), knowing that the property involved in the financial transactions
represented the proceeds of some form of unlawful activity, and knowing that the
transactions were designed in whole and in part to conceal or disguise the nature, the
location, the source, the ownership, and the control of the proceeds of specified unlawful
activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i);

k. To transport, transmit, and transfer, and attempt to transport, transmit,
and transfer, monetary instruments and funds from places in the United States to and
through places outside the United States, and to places in the United States from and
through places outside the United States, knowing that the monetary instruments and funds

¹ Cascade Pointe LLC, Cascade Pointe of Arizona LLC, and Cascade Pointe of Nevils LLC
are collectively referenced in this Information as "Cascade Pointe."

1 involved in the transportations, transmissions, and transfers represented the proceeds of
2 some form of unlawful activity and knowing that such transportations, transmissions, and
3 transfers were designed in whole or in part to conceal or disguise the nature, the location,
the source, the ownership, and the control of the proceeds of specified unlawful activity, in
violation of Title 18, United States Code, Section 1956(a)(2)(B)(i); and

4 1 To knowingly and willfully engage and attempt to engage monetary
5 transactions by, through, or to financial institutions, which monetary transactions affected
6 interstate and foreign commerce, in criminally derived property of a value greater than
\$10,000, such property having been derived from specified unlawful activities, that is mail
fraud, wire fraud, and securities fraud, in violation of Title 18, United States Code, Section
1957.

7 MANNER AND MEANS OF THE CONSPIRACY

8 m. It was a part of the conspiracy and scheme to defraud that defendant
9 KEVIN McCARTHY and others known and unknown to the United States Attorney offered
10 and sold, and caused to be offered and sold, and aided and abetted the offer and sale of,
11 securities issued by HMC, Project X, Znetix, and Cascade Pointe to thousands of investors
located in Washington State and many other states by means of false and fraudulent
statements, representations, promises, and pretenses, including, but not limited to, the false
and fraudulent statements that:

12 i. investors who purchased the securities of HMC for one dollar
13 per share would receive four shares of Znetix for each share of HMC at the point when
Znetix purchased or merged with HMC;

14 ii Znetix would very shortly engage in an Initial Public Offering
15 ("IPO"), after which Znetix securities could be freely traded on exchanges such as
NASDAQ;

16 iii. Znetix shares would be valued at substantially more than one
17 dollar per share after the IPO;

18 iv Znetix had retained prominent investment banking and
underwriting firms who were working on the IPO;

19 v Znetix had filed or would very shortly file a registration
20 statement with the United States Securities and Exchange Commission;

21 vi Znetix was in a "quiet period" just prior to the IPO,

22 vii Znetix had sold or would shortly sell licenses for
23 approximately \$1 million apiece to operate health and fitness clubs throughout the United
States;

24 viii. Znetix would receive \$500 million from an investor group
from China;

25 ix Cascade Pointe was a private investment firm under
26 management by individuals who were not affiliated with HMC and Znetix,

27 x. Cascade Pointe was one of the nation's leading private
28 investment firms, and believed in "diversification" and investments based on "rock-solid
financials;"

1 xi. Cascade Pointe would and had the ability to fund, by means of
2 cash or lines of credit, a "rescission offer" to be made by HMC to its investors, which
3 rescission offer was a final step before the Znetix IPO and would afford HMC investors the
4 opportunity to choose between a refund of their investments or keeping their investment
5 with HMC in place;

6 xii. the rescission offer, and therefore the Znetix IPO, was
7 imminent;

8 xiii. Cascade Pointe would operate health and fitness clubs in
9 Arizona and in international locations such as Japan, and would receive tens of millions of
10 dollars of revenue;

11 xiv. investors who received "units" in Cascade Pointe would
12 receive more than one share of HMC stock for each unit, and would later receive four
13 shares of Znetix for each HMC share;

14 xv. Znetix had or was about to obtain a contract with the U S
15 Department of Defense worth billions of dollars,

16 xvi. Various shell corporations established in the Caribbean nation
17 of Nevis would provide tens of millions of dollars in the form of lines of credit to Cascade
18 Pointe;

19 xvii. Cascade Pointe investors would receive millions of shares in
20 HMC after the rescission offer to be made by HMC

21 n. It was a part of the conspiracy and scheme to defraud that in the offer
22 and sale of the securities issued by HMC, Project X, Znetix, and Cascade Pointe, the
23 defendant KEVIN McCARTHY and others known and unknown to the United States
24 Attorney failed to truthfully and accurately disclose in a registration statement, prospectus,
25 private placement memorandum or in any other form material facts, including but not
26 limited to:

27 i. the uses to which investors' money would be put;

28 ii. the financial condition of the HMC, Project X, Znetix, and
Cascade Pointe;

 iii. the lack of financial controls at HMC, Project X, Znetix, and
Cascade Pointe;

 iv. the compensation to be received by defendants and others
associated with HMC, Project X, Znetix, and Cascade Pointe,

 v. that HMC, Project X, Znetix, and Cascade Pointe were under
common management and control;

 o. It was a part of the conspiracy and scheme to defraud that defendant
KEVIN McCARTHY and others known and unknown to the United States Attorney used
millions of dollars of funds received from investors for personal use, and for other
purposes not disclosed to investors

 p. It was a part of the conspiracy and scheme to defraud that the
defendant KEVIN McCARTHY and others known and unknown to the United States
Attorney established and used a series of shell companies in the United States, in the

1 Carribean nation of Nevis, and elsewhere, to promote the scheme and to conceal the
ownership and control of funds;

2 q It was a part of the conspiracy and scheme to defraud that the
3 coconspirators used millions of dollars of investor funds to promote the scheme by
4 sponsoring hydroplane and offshore racing boats, the Seattle Mariners major league
baseball team, and other prominent organizations and events, by hosting lavish parties in
5 Los Angeles and elsewhere, and by paying professional sports stars to wear items imprinted
with the Znetix logo

6 r. It was a part of the conspiracy and scheme to defraud that defendant
7 KEVIN McCARTHY and others known and unknown to the United States Attorney paid
employees and consultants outrageously high salaries to work, wittingly or unwittingly, in
8 furtherance of the conspiracy and scheme to defraud.

9 s. It was a part of the conspiracy and scheme to defraud that defendant
10 KEVIN McCARTHY and others known and unknown to the United States Attorney misled
and attempted to mislead the State of Washington, the U.S. Securities and Exchange
Commission, and others with regard to the activities of HMC, Znetix, Cascade Pointe, and
11 those affiliated with them;

12 t. It was a part of the conspiracy and scheme to defraud that defendant
13 KEVIN McCARTHY and others known and unknown to the United States Attorney
employed multi-level marketing techniques and various sales agents to sell the securities of
HMC, Znetix, and Cascade Pointe to over five thousand investors throughout the
14 United States.

15 u. It was a part of the scheme to defraud that defendant KEVIN
16 McCARTHY and others known and unknown to the United States Attorney lulled and
attempted to lull investors, through oral and written communications containing false and
misleading statements, into believing that their investments with HMC, Znetix, Cascade
17 Pointe, and related entities, would result in the creation of significant wealth.

18 OVERT ACTS

19 In furtherance of the conspiracy, and to promote the objects thereof,
defendant KEVIN McCARTHY and others known and unknown to the United States
20 committed and caused to be committed, among others, the overt act described in Count 2
of the Information, and the following:

21 v. On or about May 2, 2001, defendant KEVIN McCARTHY and others
22 known and unknown to the United States Attorney caused the formation of Cascade Pointe,
LLC, as a Washington State limited liability company.

23 w. On or about June 26, 2001, Cascade Pointe and HMC executed a
24 "letter of intent" purporting to commit Cascade Pointe to provide \$35 million to fund a
rescission offer to be made by HMC to investors

25 x. On or about July 2, 2001, defendant KEVIN McCARTHY caused a
26 letter to be sent from Julie S. Mills to the manager of Cascade Pointe stating that
Palladium Capital Partners, Ltd. of Nevis would provide Cascade Pointe with a \$5 million
line of credit for an up front fee of \$175,000.

27 y. On or about July 11, 2001, defendant KEVIN McCARTHY caused a
28 letter to be sent from Julie S. Mills to the manager of Cascade Pointe stating that

1 Rutherford, York & Baxter, Ltd. of Nevis would provide Cascade Pointe with a \$10 million
line of credit for an up front fee of \$200,000.

2 z. On or about July 12, 2001, defendant KEVIN McCARTHY caused a
3 letter to be sent from Julie S. Mills to the manager of Cascade Pointe stating that Winfield
& Brundidge Investments, Inc. of Nevis would provide Cascade Pointe with a \$10 million
4 line of credit for an up front fee of \$150,000.

5 aa. On or about July 12, 2001, the manager of Cascade Pointe sent a
letter to investors stating, among other things, that:

6 i. the contract between HMC and Cascade Pointe "discloses in
7 excess of \$60 million in promissory notes due to HMC, Inc. by other companies,"

8 ii. Cascade Pointe "has been awarded the state of Arizona by
Znetix. The anticipated annual revenues will be between \$50 million and \$100 million
9 within the first five years of operation;"

10 iii. Cascade Pointe "will also be participating in some portion of
the international markets of the Znetix rollout," and

11 iv. Cascade Pointe "has secured a \$50 million line of credit from
12 several private money groups"

13 bb. On or about July 16, 2001, the manager of Cascade Pointe sent a
letter to investors stating, among other things, that:

14 i. "On Friday night last, July 13, I signed the final agreement to
15 acquire HMC, Inc. rescission stock, some assets and some liabilities. This agreement now
gives HMC the ability to start its rescission process by providing the funding necessary for
16 HMC to purchase back shares as requested," and

17 ii. "With the retaining of a couple of new Fund Managers as
consultants, we should be able to finish our \$50 million round by the end of the week."

18 cc. On or about July 16, 2001, defendant KEVIN McCARTHY caused a
19 letter to be sent from Kim Singh to the manager of Cascade Pointe stating that Hawkins &
Holland, Inc. of Nevis would provide Cascade Pointe with a \$10 million line of credit for
20 an up front fee of \$250,000.

21 dd. On or about July 16, 2001, defendant KEVIN McCARTHY caused a
letter to be sent from Julie S. Mills to the manager of Cascade Pointe stating that Nurrell
22 Marcos Capital, Ltd. of Nevis would provide Cascade Pointe with a \$10 million line of
credit for an up front fee of \$150,000.

23 ee. On or about July 21, 2001, the manager of Cascade Pointe sent an e-
24 mail message to investors stating, among other things, that:

25 i. "We are now negotiating to participate in a new foreign
opportunity. We are entering discussions for the very real possibility of Cascade Pointe
26 participating in the licensing of over 150 health club/fitness centers in Tokyo, Japan. This
just continues to increase your future income stream as a founding member;" and

27 ii. "This past week someone gave me a great metaphor about this
28 journey we have been on. He suggested it was like an Olympic marathon and we have just
entered the Olympic stadium - Wow?"

PLEA AGREEMENT

(Kevin McCarthy, Case No. CR02-242P) - 12

UNITED STATES ATTORNEY
601 UNION STREET, SUITE 5100
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1 ff. On or about July 24, 2001, the manager of Cascade Pointe sent a
2 letter to investors, stating, among other things, that Cascade Pointe would be moving its
3 "legal venue" to the Carribean nation of Nevis, and that on or around August 15, 2001,
4 Cascade Pointe would be "retaining the services of an investment banker like Bear Stearns
5 or Stiffel, Nicolaus to assist us in raising money to build the facilities."

6 gg. On or about August 9, 2001, Cascade Pointe and HMC executed an
7 "Amended and Restated Stock Purchase Agreement" purporting to commit Cascade Pointe
8 to provide \$55 million to fund a rescission offer to be made by HMC to investors.

9 hh. On or about August 28, 2001, defendant KEVIN McCARTHY sent an
10 e-mail message to two individuals affiliated with Cascade Pointe stating, among other
11 things, that an "action item" was to "[t]ry to get \$2 to \$3 million in this week and another \$1
12 mill minimum next week."

13 ii. On or about September 7, 2001, defendant KEVIN McCARTHY
14 caused a letter to be sent from J. Michelle Williams to the manager of Cascade Pointe
15 stating that Lloyd's & Lloyd's Financial, Ltd. of Nevis would provide Cascade Pointe with a
16 \$10 million line of credit for an up front fee of \$150,000

17 jj. On November 2, 2001, a wire transfer in the amount of \$40,500.00,
18 representing funds obtained from investors, was received by Cascade Pointe from an
19 account controlled by John Brust at Royal American Bank.

20 kk. On November 2, 2001, funds in the amount of \$125,000.00 were
21 withdrawn from a bank account controlled by Cascade Pointe for the purchase of cashier's
22 check number 0604963566 payable to HMC.

23 ll. On November 7, 2001, funds in the amount of \$50,000.00 were
24 withdrawn from a bank account controlled by Cascade Pointe for the purchase of cashier's
25 check number 8590333743 payable to HMC.

26 mm. On November 9, 2001, funds in the amount of \$100,000.00 were
27 withdrawn from a bank account controlled by Cascade Pointe for the purchase of cashier's
28 check number 8590333968 payable to HMC.

nn. On November 20, 2001, funds in the amount of \$140,000.00 were
withdrawn from a bank account controlled by Cascade Pointe for the purchase of cashier's
check number 8590335507 payable to HMC.

oo. On November 26, 2001, funds in the amount of \$125,000.00 were
withdrawn from a bank account controlled by Cascade Pointe for the purchase of cashier's
check number 8590336083 payable to HMC

pp. On November 26, 2001, funds in the amount of \$100,000.00 were
withdrawn from a bank account controlled by Cascade Pointe for the purchase of cashier's
check number 8590335912 payable to HMC

qq. On December 7, 2001, a wire transfer of funds in the amount of
\$50,000.00, was sent from a Bank of America account in the name of Cascade Pointe LLC
to ABN Amro Bank, for the benefit of Lemur Capital Ltd., an entity established in the
Carribean nation of Nevis.

rr. On December 19, 2001, Nightwind Enterprises, a Nevada corporation
established and controlled by defendant KEVIN McCARTHY, received a wire transfer in
the amount of \$50,000.00 from a Bank of America account in the name of Cascade Pointe.

1 ss. On January 16, 2002, funds in the amount of \$50,000.00 were
2 withdrawn from a bank account controlled by Cascade Pointe for the purchase of a
cashier's check payable to HMC.

3 tt On January 18, 2002, funds in the amount of \$85,000.00 were
4 withdrawn from a bank account controlled by Cascade Pointe for the purchase of a
cashier's check payable to HMC

5 **COUNT 2 - MAIL FRAUD**

6 uu. On or about May 25, 2001, at Bellevue, within the Western District of
7 Washington, defendant KEVIN McCARTHY, together with others known and unknown to
the United States Attorney, having devised the scheme and artifice to defraud described
8 above, did, for the purpose of executing such scheme and artifice to defraud and for
obtaining money and property by means of false and fraudulent pretenses, representations,
9 and promises, and for attempting to do so, knowingly and willfully send and deliver and
cause to be sent and delivered by the United States Postal Service according to the
10 directions thereon a Promissory Note dated May 25, 2001, in the amount of \$50,000,
payable from HMC, Inc. to an investor with the initials R N.; said Promissory Note was sent
11 through the United States mail from an HMC office located in Bellevue, Washington, to
R N located in Twin Falls, Idaho

12 12. Cooperation.

13 a. Defendant shall cooperate completely and truthfully with law
14 enforcement authorities in the investigation and prosecution of other individuals involved
15 in criminal activity. Such cooperation shall include, but not be limited to, complete and
16 truthful statements to law enforcement officers, as well as complete and truthful testimony,
17 if called as a witness before a grand jury, or at any state or federal trial, retrial, or other
18 judicial proceedings. Defendant acknowledges that this obligation to cooperate shall
19 continue after Defendant has entered guilty pleas and sentence has been imposed, no matter
20 what sentence Defendant receives, Defendant's failure to do so may constitute a breach of
21 this Plea Agreement

22 b. Defendant understands that the United States will tolerate no
23 deception from him. If, in the estimation of the United States Attorney, information or
24 testimony provided from the date of the Plea Agreement, proves to be untruthful or
25 incomplete in any way, regardless of whether the untruthfulness helps or hurts the United
26 States' case, the United States Attorney for the Western District of Washington may
27 consider that Defendant has breached this Plea Agreement.
28

1 c. The United States Attorney's Office for the Western District of
2 Washington, in turn, agrees not to prosecute Defendant for any other offenses, other than
3 crimes of violence, that Defendant may have committed in the Western District of
4 Washington prior to the date of this Agreement about which. (1) the United States
5 presently possesses information; or (2) Defendant provides information pursuant to this
6 Agreement to cooperate with the authorities.

7 d. The parties agree that information provided by Defendant in
8 connection with this Plea Agreement shall not be used to determine Defendant's sentence,
9 except to the extent permitted by U S S.G. § 1B1.8

10 e. In exchange for Defendant's cooperation, as described above, and
11 conditioned upon Defendant's fulfillment of all conditions of this Plea Agreement, the
12 United States Attorney agrees to consider filing a motion, pursuant to U.S.S.G. § 5K1.1,
13 permitting the Court to sentence Defendant to less than the otherwise applicable
14 Sentencing Guideline range

15 f Defendant agrees that his sentencing date may be delayed based on the
16 United States' need for his continued cooperation, and agrees not to object to any
17 continuances of his sentencing date sought by the United States.

18 13 Acceptance of Responsibility. The United States acknowledges that if
19 Defendant qualifies for the two-point acceptance of responsibility adjustment pursuant to
20 U S.S.G § 3E1.1(a), and if the offense level is sixteen (16) or greater, Defendant's total
21 offense level should be decreased by an additional one (1) level pursuant to U S S G §
22 3E1 1(b), because Defendant has assisted the United States by timely notifying the
23 authorities of his intention to plead guilty, thereby permitting the United States to avoid
24 preparing for trial and permitting the Court to allocate its resources efficiently.

25 14. Non-Prosecution of Additional Offenses and Defendant's Spouse. If the
26 defendant complies fully with this Plea Agreement, the United States Attorney's Office for
27 the Western District of Washington agrees not to prosecute Defendant for any additional
28 offenses known to it as of the time of this Agreement that are based upon evidence in its

1 possession at this time, or that arise out of the conduct giving rise to this investigation. In
2 this regard, Defendant recognizes that the United States has agreed not to prosecute all of
3 the criminal charges that the evidence establishes were committed by Defendant solely
4 because of the promises made by Defendant in this Agreement. Defendant acknowledges
5 and agrees, however, that for purposes of preparing the Presentence Report, the United
6 States Attorney's Office will provide the United States Probation Office with evidence of
7 all relevant conduct committed by Defendant.

8 The United States further agrees that, if the defendant complies fully with
9 this Plea Agreement, the United States Attorney's Office for the Western District of
10 Washington will not criminally prosecute defendant's spouse, Rachel McCarthy, for any
11 criminal offenses about which the United States currently possesses evidence and for
12 which there is venue in the Western District of Washington.

13 The agreements stated in this paragraph do not apply to crimes of violence.

14 15. Voluntariness of Plea. Defendant acknowledges that he has entered into this
15 Plea Agreement freely and voluntarily, and that no threats or promises, other than the
16 promises contained in this Plea Agreement, were made to induce Defendant to enter these
17 pleas of guilty

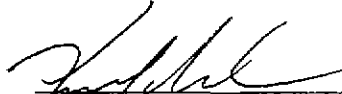
18 16. Statute of Limitations. In the event that this Agreement is not accepted by
19 the Court for any reason, or Defendant has breached any of the terms of this Plea
20 Agreement, the statute of limitations shall be deemed to have been tolled from the date of
21 the Plea Agreement to the later of: (1) 30 days following the date of non-acceptance of the
22 Plea Agreement by the Court; or (2) 30 days following the date on which a breach of the
23 Plea Agreement by Defendant is discovered by the United States Attorney's Office.

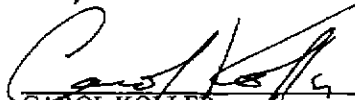
24 17. Post-Plea Conduct Defendant understands that the terms of this Plea
25 Agreement apply only to conduct that occurred prior to the execution of this Agreement.
26 If, after the date of this Agreement, Defendant should engage in conduct that would warrant
27 an increase in Defendant's adjusted offense level or justify an upward departure under the
28 Sentencing Guidelines (examples of which include, but are not limited to. obstruction of

1 justice, failure to appear for a court proceeding, criminal conduct while pending
2 sentencing, and false statements to law enforcement agents, the probation officer or
3 Court), the United States is free under this Agreement to seek a sentencing enhancement or
4 upward departure based on that conduct.

5 18. Completeness of Agreement. The United States and Defendant acknowledge
6 that these terms constitute the entire Plea Agreement between the parties. This Agreement
7 only binds the United States Attorney's Office for the Western District of Washington. It
8 does not bind any other United States Attorney's Office or any other office or agency of
9 the United States, or any state or local prosecutor

10 DATED: This 23rd day of July, 2002

11
12 
13 KEVIN MCCARTHY
Defendant

14
15 
16 CAROL KOELER
Attorney for Defendant

17
18 
19 JEFFREY B. COOPERSMITH
Assistant United States Attorney

Office of the Prosecuting Attorney
King County, Washington
Fraud Division

Norm Maleng
Prosecuting Attorney

1902 Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
(206) 296-9082
FAX 206-8008

July 22, 2002

Jeffrey B. Coopersmith
Assistant United States Attorney
U. S. Attorney's Office
601 Union Street, #5100
Seattle, WA 98101-8908

Re: Kevin McCarthy

Dear Mr. Coopersmith:

The Office of the United States Attorney for the Western District of Washington has informed the King County Prosecutor's Office of the following:

Your office is investigating Znetix, Health Maintenance Centers, Inc., Cascade Points and affiliated entities and individuals associated with these companies.

One of those individuals, Kevin McCarthy, has agreed to plead guilty and cooperate in the investigation of other individuals associated with these companies.

During your investigation you discovered that Mr. McCarthy had made 72 recordings of conversations without the knowledge or consent of the other parties to the conversations, and may, thus, be in violation of the Washington Privacy Act, RCW 9.73.030. Most of these recordings were of conversations with Kevin Lawrence, the founder of Znetix and the related companies.

Mr. McCarthy's attorney wants assurances, prior to the entry of his plea, that he will not be prosecuted under the Washington Privacy Act for these recordings.

Your office requests us to give such assurances to Mr. McCarthy and his attorney.

Based on this information it is our assessment that it is in the interest of justice for us to comply with your request. Thus, the King County Prosecutor's Office agrees not to prosecute Kevin McCarthy under the provisions of RCW 9.73.030 for recordings made by Mr. McCarthy:

07/23/02 09:30

206 2959009

King Cnty Prosec --- US ATTORNEY SEAT

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1. The agreement covers only recordings known, as of this date, by your office.
2. Mr. McCarthy must comply with all provisions of the plea agreement.
3. Mr. McCarthy must be sentenced in accordance with the terms of the plea agreement.

For NORM MALENG, King County Prosecuting Attorney



IVAN ORTON
Senior Deputy Prosecuting Attorney
Fraud Division